

**FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION**

**GREGORY GILLIAN,**

**Plaintiff,**

**VS.**

**JOHN SCOTT GARMON,**

**Defendant.**

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**CIVIL ACTION FILE  
NO. 1:06-CV-175 (WLS)**

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**RECOMMENDATION**

This is a section 1983 action brought by a plaintiff who must be considered to be a recreational litigator in this court.<sup>1</sup> Presently pending is the Defendant's Motion to Dismiss the complaint which was filed on January 29, 2007. Defendant alleges that the plaintiff had "three strikes" within the meaning of the Prison Litigation Reform Act ("PLRA") at the time he filed this action on December 26, 2006, and that he should therefore be denied *in forma pauperis* status. Out of an abundance of caution the court counts strikes at the end of an appeal or at the end of the time period in which to file an appeal of a dismissal. Thus the court is not sure that it agrees with defendant's computation of plaintiff's strikes at the time he filed this action. The court is certain however that the plaintiff presently has more than three strikes meaning that he must, in the future, pay the entire civil filing fee at the time he commences any other section 1983 action or comply fully with § 1915(g) of the PLRA.

The court gave the plaintiff its customary notice of the filing of the defendant's motion on

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<sup>1</sup>Plaintiff has filed at least forty-four section 1983 actions in this court within the past two years.

or about January 30, 2007. (Document # 7). For reasons best known to the plaintiff he refused to sign for the certified mailing containing the above referenced notice which was returned to the court on or about February 12, 2007 marked “inmate refused to sign” (Document # 8). 22p

In the court’s January 30, 2007, notice of the defendant’s motion, the court specifically notes that “if plaintiff fails to oppose said motion, his complaint may be dismissed as to those defendants. . . . FAILURE OF THE PLAINTIFF HEREIN TO RESPOND TO THE MOTION TO DISMISS MAY RESULT IN THE GRANTING OF THE MOTION.” (emphasis in original). Inasmuch as the plaintiff has failed to respond to the court’s directives and has otherwise failed to respond to the merits of the defendant’s Motion to Dismiss, it is the recommendation of the undersigned that the defendant’s Motion to Dismiss be **GRANTED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

**SO RECOMMENDED**, this 25<sup>th</sup> day of June, 2007.

/s/ **Richard L. Hodge**  
RICHARD L. HODGE  
UNITED STATES MAGISTRATE JUDGE